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8
9
10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 GARY BUELOW, Individually and on Behalf of
13 All Others Similarly Situated,

14 Plaintiff,

15 v.

16 ALIBABA GROUP HOLDING LIMITED,
JACK YUN MA,
17 JOSEPH C. TSAI,
MASAYOSHI SON,
JONATHAN ZHAOXI LU,
MAGGIE WEI WU,
TIMOTHY A. STEINERT,
CREDIT SUISSE SECURITIES (USA) LLC,
DEUTSCHE BANK SECURITIES INC. LLC,
18 GOLDMAN SACHS (ASIA) LLC,
JP. MORGAN SECURITIES LLC,
MORGAN STANLEY & CO. INTERNATIONAL,
CITIGROUP GLOBAL MARKETS INC.,
BOCI ASIA LIMITED LLC,
CHINA INTERNATIONAL CAPITAL
CORPORATION HONG KONG
SECURITIES LIMITED,
CLSA LIMITED,
DBS BANK LTD.,
HSBC SECURITIES (USA) INC.,
MIZUHO SECURITIES USA INC.,
PACIFIC CREST SECURITIES LLC,
STIFEL, NICOLAUS & COMPANY,
INCORPORATED,

19 Case No. 15-cv-05179

20 Removed from:

21 Superior Court of the State of California,
County of San Mateo

22 Civil No. 535692

23 CLASS ACTION

24 **NOTICE OF REMOVAL**

25
26 [Caption continued on following page]

WELLS FARGO SECURITIES, LLC,
BNP PARIBAS SECURITIES CORP,
EVERCORE GROUP LLC,
RAYMOND JAMES & ASSOCIATES, INC.,
SUNTRUST ROBINSON HUMPHREY, INC.,
BHF-BANK AKTIENGESELLSCHAFT LLC,
CIMB SECURITIES LIMITED,
CHINA MERCHANTS SECURITIES (HK
CO., LIMITED,
ING FINANCIAL MARKETS LLC,
NEEDHAM & COMPANY LLC,
NOMURA SECURITIES INTERNATIONAL,
INC.,
RAINE SECURITIES LLC,
RBS SECURITIES INC. LLC,
SG AMERICAS SECURITIES LLC,
C L KING & ASSOCIATES, INC.,
LEBENTHAL & CO.,
MISCHLER FINANCIAL GROUP, INC.,
SAMUEL A. RAMIREZ & COMPANY, INC.,
TOPEKA CAPITAL MARKETS INC.,
THE WILLIAMS CAPITAL GROUP, L.P.
And DOES 1-25, inclusive,

Defendants.

RUSTEM NURLYBAYEV, Individually and on Behalf of All Others Similarly Situated,

Case No. CIV535840

CLASS ACTION

V.

ALIBABA GROUP HOLDING LIMITED, et al.,

Defendants.

MICHAEL HERCULES, Individually and on Behalf of All Others Similarly Situated,

Case No. CIV535887

CLASS ACTION

V

ALIBABA GROUP HOLDING LIMITED, et al..

Defendants.

1 PLEASE TAKE NOTICE that Defendant Alibaba Group Holding Limited (“Alibaba”),
2 pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446, and 15 U.S.C. § 77v(a), hereby removes the
3 entire above-captioned consolidated civil action, and all claims and causes of action therein, from
4 the Superior Court of the State of California for the County of San Mateo to the United States
5 District Court for the Northern District of California.

6 As grounds for removal, Alibaba states as follows:

7 1. On or about October 5, 2015, Plaintiff Gary Buelow commenced a civil action in
8 the Superior Court of the State of California for the County of San Mateo entitled *Gary Buelow v.*
9 *Alibaba Group Holding Limited, et al.* (the “*Buelow State Court Action*”). The case was assigned
10 an index number of 535692.

11 2. On or about October 15, 2015, Plaintiff Rustem Nurlybayev commenced a civil
12 action in the Superior Court of the State of California for the County of San Mateo entitled *Rustem*
13 *Nurlybayev v. Alibaba Group Holding Limited, et al.* (the “*Nurlybayev State Court Action*”). The
14 case was assigned an index number of 535840.

15 3. On or about October 16, 2015, Plaintiff Michael Hercules commenced a civil
16 action in the Superior Court of the State of California for the County of San Mateo entitled
17 *Michael Hercules v. Alibaba Group Holding Limited, et al.* (the “*Hercules State Court Action*”).
18 The case was assigned an index number of 535887.

19 4. On October 16, 2015, service of process of the *Buelow State Court Action* was
20 effectuated upon Alibaba.

21 5. On October 26, 2015, service of process of the *Hercules State Court Action* was
22 effectuated upon Alibaba.

23 6. On November 2, 2015, the Superior Court of the State of California entered an
24 order relating and consolidating the *Buelow State Court Action*, the *Nurlybayev State Court*
25 *Action*, and the *Hercules State Court Action* (collectively the “*State Court Action*”).

26 7. This Notice is being filed within thirty days of service of any Summons and
27 Complaint in the State Court Action on Alibaba and is timely filed under 28 U.S.C. §
28 1446(b)(2)(B).

1 8. Undersigned counsel certifies that all other defendants that have been properly
 2 served and joined consent to the removal of this action, pursuant to 28 U.S.C. § 1446(b)(2)(A) and
 3 28 U.S.C. § 1446(b)(2)(C).

4 9. This case is removable under 28 U.S.C. § 1441(a) because it is a “civil action
 5 brought in a State court of which the district courts of the United States have original jurisdiction.”

6 10. This civil action was brought in a California state court.

7 11. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331 and
 8 15 U.S.C. § 77v(a). The State Court Action is a putative nationwide class action brought against
 9 Defendant Alibaba, certain of Alibaba’s officers and directors, and the underwriters of Alibaba’s
 10 September 2014 initial public offering (“IPO”) on the New York Stock Exchange. The State
 11 Court Action alleges violations of Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the
 12 “Securities Act”), which are laws of the United States.

13 12. Adjudication of the claims in this action requires the consideration of substantial,
 14 disputed and novel questions of uniquely federal law. Among other issues, the presumption
 15 against the extraterritorial application of the Securities Act following *Morrison v. National*
 16 *Australia Bank*, 561 U.S. 247 (2010), raises significant questions when applied to the public
 17 offering at issue in this case. For example, whether non-U.S. purchasers who acquired Alibaba’s
 18 securities in the initial distribution of Alibaba’s IPO outside of the U.S. from a foreign broker
 19 pursuant to an agreement applying foreign law have viable claims under Section 11 of the
 20 Securities Act is an unsettled question requiring interpretation of federal law and, perhaps,
 21 legislative intent. Further, the court overseeing this matter will need to decide whether aftermarket
 22 purchasers can state a Section 11 claim in light of the fact that some of the shares sold in the initial
 23 distribution do not qualify as “domestic transactions.”

24 **Other Procedural Requirements**

25 13. In accordance with 28 U.S.C. § 1446(a), Exhibit A includes a copy of all process,
 26 pleadings and orders served upon Defendant Alibaba in the *Buelow* State Court Action.

27 14. Exhibit B includes a copy of all process, pleadings and orders served upon
 28 Defendant Alibaba in the *Hercules* State Court Action.

15. Exhibit C includes a copy of the Complaint in the *Nurlybayev* State Court Action. Alibaba was not served with any pleadings or process in the *Nurlybayev* State Court Action prior to removal of the State Court Action.

16. Exhibit D includes a copy of the consolidation order entered in the State Court Action on November 2, 2015.

17. Alibaba has not pled, answered, or otherwise appeared in the State Court Action.

18. In accordance with 28 U.S.C. § 1446(d), Alibaba will promptly serve written notice of the instant Notice of Removal on Plaintiffs' counsel and file with the Clerk of the Superior Court of the State of California, San Mateo County, a Notice of Filing of Notice of Removal.

19. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

WHEREFORE, Alibaba removes this action in its entirety from the Superior Court of the State of California, San Mateo County, to the United States District Court for the Northern District of California.

Dated: November 12, 2015

SIMPSON THACHER & BARTLETT LLP

By: */s/James G. Kreissman*
James G. Kreissman

Attorneys for Defendant Alibaba Group Holding Limited